

1 **SECOND ENROLLMENT**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2464**

5
6 (By Delegates Miley, Boggs, Fragale, Poling, Morgan, Hunt,
7 Fleischauer, Moore, Ellem, Hamilton and Lane)

8 [Amended and again passed, in an effort to meet the objections of
9 the Governor, March 18, 2011; in effect July 1, 2011.]

10
11 AN ACT to amend and reenact §6B-2-6 and §6B-2-7 of the Code of West
12 Virginia, 1931, as amended, and to amend and reenact §6B-3-2
13 of said code, all relating to the Ethics Act generally;
14 requiring public servants and spouses to disclose additional
15 information on financial disclosure statements including, with
16 limited exceptions, certain spousal information; defining a
17 spouse; directing the ethics commission to publish and make
18 available to the public notice of delinquent filing of
19 financial statements; providing that the ethics commission
20 publish financial statement in certain circumstances and
21 clarifying existing requirements; and prohibiting certain
22 public employees and public servants from registering as a
23 lobbyist during and for a year following state government
24 employment.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931,
3 as amended, be amended and reenacted, and that 6B-3-2 be amended
4 and reenacted, all to read as follows:

5 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
6 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC**
7 **OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC**
8 **AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW**
9 **JUDGES.**

10 **§6B-2-6. Financial disclosure statement; filing requirements.**

11 (a) The Financial disclosure statement shall be filed on the
12 first day of February of each calendar year to cover the period of
13 the preceding calendar year, except insofar as may be otherwise
14 provided herein. The following persons must file the financial
15 disclosure statement required by this section with the ethics
16 commission:

17 (1) All elected officials in this state, including, but not
18 limited to, all persons elected statewide, all county elected
19 officials, municipal elected officials in municipalities which
20 have, by ordinance, opted to be covered by the disclosure
21 provisions of this section, all members of the several county or
22 district boards of education and all county or district school
23 board superintendents;

24 (2) All members of state boards, commissions and agencies

1 appointed by the governor; and

2 (3) Secretaries of departments, commissioners, deputy
3 commissioners, assistant commissioners, directors, deputy
4 directors, assistant directors, department heads, deputy department
5 heads and assistant department heads.

6 A person who is required to file a financial disclosure
7 statement under this section by virtue of becoming an elected or
8 appointed public official whose office is described in subdivision
9 (1), (2) or (3) of this subsection, and who assumes the office less
10 than ten days before a filing date established herein or who
11 assumes the office after the filing date, shall file a financial
12 disclosure statement for the previous twelve months no later than
13 thirty days after the date on which the person assumes the duties
14 of the office, unless the person has filed a financial disclosure
15 statement with the commission during the twelve-month period before
16 he or she assumed office.

17 (b) A candidate for public office shall file a financial
18 disclosure statement for the previous calendar year with the state
19 ethics commission no later than ten days after he or she files a
20 certificate of candidacy, but in all circumstances, not later than
21 ten days prior to the election, unless he or she has filed a
22 financial disclosure statement with the state ethics commission
23 during the previous calendar year.

24 The ethics commission shall file a duplicate copy of the

1 financial disclosure statement required in this section in the
2 following offices within ten days of the receipt of the candidate's
3 statement of disclosure:

4 (1) Municipal candidates in municipalities which have opted,
5 by ordinance, to be covered by the disclosure provisions of this
6 section, in the office of the clerk of the municipality in which
7 the candidate is seeking office;

8 (2) Legislative candidates in single county districts and
9 candidates for a county office or county school board in the office
10 of the clerk of the county commission of the county in which the
11 candidate is seeking office;

12 (3) Legislative candidates from multi-county districts and
13 congressional candidates in the office of the clerk of the county
14 commission of the county of the candidate's residence.

15 After a ninety-day period following any election, the clerks
16 who receive the financial disclosure statements of candidates may
17 destroy or dispose of those statements filed by candidates who were
18 unsuccessful in the election.

19 (c) No candidate for public office may maintain his or her
20 place on a ballot and no public official may take the oath of
21 office or enter or continue upon his or her duties or receive
22 compensation from public funds unless he or she has filed a
23 financial disclosure statement with the state ethics commission as
24 required by the provisions of this section.

1 (d) The ethics commission may, upon request of any person
2 required to file a financial disclosure statement, and for good
3 cause shown, extend the deadline for filing such statement for a
4 reasonable period of time: *Provided*, That no extension of time
5 shall be granted to a candidate who has not filed a financial
6 disclosure statement for the preceding filing period.

7 (e) No person shall fail to file a statement required by this
8 section.

9 (f) No person shall knowingly file a materially false
10 statement that is required to be filed under this section.

11 (g) The ethics commission shall publish either on the internet
12 or by printed document made available to the public, a list of all
13 persons who have violated any ethics commission's financial
14 disclosure statement filing deadline.

15 (h) The ethics commission shall, in addition to making all
16 financial disclosure statements available for inspection upon
17 request:

18 (1) Publish on the internet all financial disclosure
19 statements filed by members of the legislature and candidates for
20 legislative office, elected members of the executive department and
21 candidates for the offices that constitute the executive
22 department, and members of the Supreme Court of Appeals and
23 candidates for the Supreme Court of Appeals, commencing with those
24 reports filed on or after January 1, 2012; and

1 (2) Publish on the internet all financial disclosure
2 statements filed by any other person required to file such
3 financial disclosure statements, as the commission determines
4 resources are available to permit the ethics commission to make
5 such publication on the internet. The Commission shall redact
6 financial disclosure statements published on the internet to
7 exclude from publication personal information such as signatures,
8 home addresses and mobile and home telephone numbers.

9 **§6B-2-7. Financial disclosure statement; contents.**

10 (a) The financial disclosure statement required under this
11 article shall contain the following information:

12 (1) The name, residential and business addresses of the person
13 filing the statement and of his or her spouse and all names under
14 which the person or the person's spouse, or both, do business. For
15 purposes of this section, the word "spouse" means any individual
16 who is legally married to and cohabits with the person filing the
17 statement.

18 (2) For each position of employment held by the person filing
19 the statements and the person's spouse:

20 (A) The name of the employer;

21 (B) The address of the employer;

22 (C) The job title; and

23 (D) A general description of job duties.

24 (3) The name and address of each business in which the person

1 filing the statement or that person's spouse has or had in the last
2 year an interest of at least \$10,000 at fair market value.

3 (A) For the purposes of this subsection, business interests
4 include, but are not limited to, an interest in:

5 (i) Non-publicly owned businesses;

6 (ii) Publicly or privately traded stocks, bonds or securities,
7 including those held in self-directed retirement accounts; and

8 (iii) Commercial real estate.

9 (B) For the purposes of this subsection, business interests do
10 not include mutual funds, specific holdings in mutual funds or
11 retirement accounts.

12 (4) The name, address, and brief description of a nonprofit
13 organization in which the individual or spouse is a director or
14 officer.

15 (5) The identification, by category, of every source of income
16 over \$1,000, including distributions from retirement accounts
17 received during the preceding calendar year, in his or her own name
18 or by any other person for his or her use or benefit, by the person
19 filing the statement, or that person's spouse, and a brief
20 description of the nature of the income producing activities for
21 which the income was received. This subdivision does not require
22 a person filing the statement who derives income from a business,
23 profession or occupation, or who's spouse derives income from a
24 business, profession or occupation, to disclose the individual

1 sources and items of income that constitute the gross income of
2 that business, profession or occupation.

3 (6) If the person filing the statement, or that person's
4 spouse, profited or benefitted in the year before the date of
5 filing from a contract for the sale of goods or services to a
6 state, county, municipal or other local governmental agency either
7 directly or through a partnership, corporation or association in
8 which the person, or that person's spouse, owned or controlled more
9 than ten percent, the person shall describe the nature of the goods
10 or services and identify the governmental agencies which purchased
11 the goods or services.

12 (7) Each interest group or category listed below doing
13 business in this state with which the person filing the statement,
14 did business or furnished services and from which the person filing
15 the statement, or that person's spouse, received more than twenty
16 percent of his or her gross income during the preceding calendar
17 year. The groups or categories are electric utilities, gas
18 utilities, telephone utilities, water utilities, cable television
19 companies, interstate transportation companies, intrastate
20 transportation companies, oil or gas retail, wholesale,
21 exploration, production or drilling companies, banks, savings and
22 loan associations, loan or finance companies, manufacturing
23 companies, surface mining companies, deep mining companies, mining
24 equipment companies, chemical companies, insurance companies,

1 retail companies, beer, wine or liquor companies or distributors,
2 recreation related companies, timbering companies, hospitals or
3 other health care providers, trade associations, professional
4 associations, associations of public employees or public officials,
5 counties, cities or towns, labor organizations, waste disposal
6 companies, wholesale companies, groups or associations promoting
7 gaming or lotteries, advertising companies, media companies, race
8 tracks, promotional companies, lobbying, economic development
9 entities, state government, construction, information technology
10 and legal service providers.

11 (8) The names of all persons, excluding that person's
12 immediate family, parents or grandparents residing or transacting
13 business in the state to whom the person filing the statement,
14 owes, on the date of execution of this statement in the aggregate
15 in his or her own name or in the name of any other person more than
16 \$5,000: *Provided*, That nothing herein requires the disclosure of
17 a mortgage on the person's primary and secondary residences or of
18 automobile loans on automobiles maintained for the use of the
19 person's immediate family, or of a student loan, nor does this
20 section require the disclosure of debts which result from the
21 ordinary conduct of the person's business, profession or occupation
22 or of debts of the person filing the statement to any financial
23 institution, credit card company or business, in which the person
24 has an ownership interest: *Provided, however*, That the previous

1 proviso does not exclude from disclosure loans obtained pursuant to
2 the linked deposit program provided in article one-a, chapter
3 twelve of this code or any other loan or debt incurred which
4 requires approval of the state or any of its political
5 subdivisions.

6 (9) The names of all persons except immediate family members,
7 parents and grandparents residing or transacting business in the
8 state (other than a demand or savings account in a bank, savings
9 and loan association, credit union or building and loan association
10 or other similar depository) who owes on the date of execution of
11 this statement more than, in the aggregate, \$5,000 to the person
12 filing the statement, either in his or her own name or to any other
13 person for his or her use or benefit. This subdivision does not
14 require the disclosure of debts owed to the person filing the
15 statement which debts result from the ordinary conduct of the
16 person's business, profession or occupation or of loans made by the
17 person filing the statement to any business in which the person has
18 an ownership interest.

19 (10) The source of each gift, including those described in
20 subdivision (2), subsection (c), section five of this article,
21 having a value of over \$100, received from a person having a direct
22 and immediate interest in a governmental activity over which the
23 person filing the statement has control, shall be reported by the
24 person filing the statement when the gift is given to that person

1 in his or her name or for his or her use or benefit during the
2 preceding calendar year: *Provided*, That any person filing a
3 statement required to be filed pursuant to this section is not
4 required to report those gifts described in subdivision (2),
5 subsection (c), section five of this article that are otherwise
6 required to be reported by a registered lobbyist under section
7 four, article three of this chapter: *Provided, however*, That gifts
8 received by will or by virtue of the laws of descent and
9 distribution, or received from one's spouse, child, grandchild,
10 parents or grandparents, or received by way of distribution from an
11 inter vivos or testamentary trust established by the spouse or
12 child, grandchild or by an ancestor of the person filing the
13 statement are not required to be reported. As used in this
14 subdivision, any series or plurality of gifts which exceeds in the
15 aggregate the sum of \$100 from the same source or donor, either
16 directly or indirectly, and in the same calendar year are regarded
17 as a single gift in excess of that aggregate amount.

18 (11) The name of each for-profit business of which the person
19 filing the statement, or that person's spouse, serves as a member
20 of the board of directors or an officer, as well as a general
21 description of the type of business.

22 (12) The name and business address of any child or step-child
23 who is eighteen years or older and employed by state, county or
24 municipal government.

1 (13) The signature of the person filing the statement.

2 (b) Notwithstanding the provisions of subsection (a) of this
3 section, any person serving on a board, commission or agency for
4 which no compensation, other than expense reimbursement, is
5 statutorily authorized, is not required to disclose the financial
6 information relating to his or her spouse as required by
7 subdivisions three or five of subsection (a) of this section if:

8 (1) his or her spouse, or a business with which he or she is
9 associated, are not regulated by, do not have a contract with, or
10 do not receive any grants or appropriations from, the board, the
11 commission or agency on which the person filing the statement
12 serves. A business with which a filer's spouse is associated means
13 a business in which the person or an immediate family member is a
14 director, officer, owner, employee, compensated agent, or holder of
15 stock which constitutes five percent or more of the total
16 outstanding stocks of any class; and,

17 (2) the filer executes a signed statement on a form provided
18 by the commission verifying these facts.

19 **ARTICLE 3. LOBBYISTS.**

20 **§6B-3-2. Registration of lobbyists.**

21 (a) Before engaging in any lobbying activity, or within thirty
22 days after being employed as a lobbyist, whichever occurs first, a
23 lobbyist shall register with the Ethics Commission by filing a
24 lobbyist registration statement. The registration statement shall

1 contain information and be in a form prescribed by the Ethics
2 Commission by legislative rule, including, but not limited to, the
3 following information:

4 (1) The registrant's name, business address, telephone numbers
5 and any temporary residential and business addresses and telephone
6 numbers used or to be used by the registrant while lobbying during
7 a legislative session;

8 (2) The name, address and occupation or business of the
9 registrant's employer;

10 (3) A statement as to whether the registrant is employed or
11 retained by his or her employer solely as a lobbyist or is a
12 regular employee performing services for the employer which
13 include, but are not limited to, lobbying;

14 (4) A statement as to whether the registrant is employed or
15 retained by his or her employer under any agreement, arrangement or
16 understanding according to which the registrant's compensation, or
17 any portion of the registrant's compensation, is or will be
18 contingent upon the success of his or her lobbying activity;

19 (5) The general subject or subjects, if known, on which the
20 registrant will lobby or employ some other person to lobby in a
21 manner which requires registration under this article; and

22 (6) An appended written authorization from each of the
23 lobbyist's employers confirming the lobbyist's employment and the
24 subjects on which the employer is to be represented.

1 (b) Any lobbyist who receives or is to receive compensation
2 from more than one person for services as a lobbyist shall file a
3 separate notice of representation with respect to each person
4 compensating him or her for services performed as a lobbyist. When
5 a lobbyist whose fee for lobbying with respect to the same subject
6 is to be paid or contributed by more than one person, then the
7 lobbyist may file a single statement, in which he or she shall
8 detail the name, business address and occupation of each person
9 paying or contributing to the fee.

10 (c) Whenever a change, modification or termination of the
11 lobbyist's employment occurs, the lobbyist shall, within one week
12 of the change, modification or termination, furnish full
13 information regarding the change, modification or termination by
14 filing with the Commission an amended registration statement.

15 (d) Each lobbyist who has registered shall file a new
16 registration statement, revised as appropriate, on the Monday
17 preceding the second Wednesday in January of each odd-numbered year
18 and failure to do so terminates his or her authorization to lobby.
19 Until the registration is renewed, the person may not engage in
20 lobbying activities unless he or she is otherwise exempt under
21 paragraph (B), subdivision (7), section one of this article.

22 (e) The following public officers or employees may not, during
23 or up to one year after the termination of their public employment
24 or service, be allowed to register as lobbyists:

1 (1) Members of the Legislature;

2 (2) Members of the Executive Department as referenced in
3 article VII, section one of the Constitution of West Virginia;

4 (3) Will and pleasure professional employees of the
5 legislature under the direct supervision of a member of the
6 legislature;

7 (4) Will and pleasure professional employees of members of the
8 Executive Department under the direct supervision of the Executive
9 Department officer and who regularly, personally and substantially
10 participates in a decision-making or advisory capacity regarding
11 agency or department policy;

12 (5) Members of the Supreme Court of Appeals;

13 (6) Any department secretary of an executive branch department
14 created by the provisions of section two, article one, chapter
15 five-f of this code; and,

16 (7) Heads of any state departments or agencies.